

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4422

BY DELEGATES BOGGS, ROHRBACH, ELLINGTON,
STAGGERS, WESTFALL, LOVEJOY, N. BROWN, HARTMAN,
SHOTT, EVANS AND MANDT

[Passed March 7, 2020; in effect ninety days from
passage.]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §16-60-1, §16-60-2, and §16-60-3, all relating to prohibiting patient brokering;
3 defining terms; prohibiting causing or participating in acts that are intended to derive any
4 benefit or profit from referral of a patient to a health care provider or health care facility;
5 prohibiting patient brokering related to a recovery residence; establishing criminal
6 penalties for persons and business entities engaged in unlawful patient brokering; and
7 providing exceptions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 60. THE PATIENT BROKERING ACT.

§16-60-1. Definitions.

1 For the purposes of this article:

2 “Health care provider or health care facility” means any person or entity licensed or
3 certified or authorized by law to provide professional health care service in this state to a patient
4 during that patient’s medical, remedial or behavioral health care, treatment, or confinement.

5 “Health care provider network entity” means a corporation, partnership, or limited liability
6 company owned or operated by two or more health care providers, and organized for the purpose
7 of entering into agreements with health insurers, health care purchasing groups, or the Medicare
8 or Medicaid program.

9 “Health insurer” means any insurance company authorized to transact health insurance in
10 the state, any insurance company authorized to transact health insurance or casualty insurance
11 in the state that is offering a minimum premium plan or stop-loss coverage for any person or entity
12 providing health care benefits, any self-insurance plan, any health maintenance organization, any
13 prepaid health clinic, any prepaid limited health service organization, any multiple-employer
14 welfare arrangement, or any fraternal benefit society providing health benefits to its members.

§16-60-2. Patient brokering prohibited.

1 (a) It is unlawful for any person, including any health care provider or health care facility,
2 to:

3 (1) Offer or pay a commission, benefit, bonus, rebate, kickback, or bribe, directly or
4 indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to
5 induce the referral of a patient or patronage to or from a health care provider or health care facility;

6 (2) Solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe, directly or
7 indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in
8 return for referring a patient or patronage to or from a health care provider or health care facility;

9 (3) Solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe, directly or
10 indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in
11 return for the acceptance or acknowledgment of treatment from a health care provider or health
12 care facility;

13 (4) Aid, abet, advise, or otherwise participate in the conduct prohibited under this
14 subsection; or

15 (5) Engage in any of the unlawful acts provided for in this subsection in regard to a
16 recovery residence as defined in §16-59-1 of this code.

17 (b) *Penalties.* –

18 (1) Any person who violates the provisions of subsection (a) of this section is guilty of a
19 felony and, upon conviction thereof, shall be fined not more than \$50,000, or imprisoned in a state
20 correctional facility for not less than one year nor more than five years, or both fined and
21 imprisoned.

22 (2) Notwithstanding the provisions of subdivision (1) of this section, any person who
23 violates subsection (a) of this section, where the prohibited conduct involves 10 or more patients,
24 is guilty of a felony and, upon conviction, shall be fined not more than \$100,000, or imprisoned in

25 a state correctional facility not less than two years nor more than five years, or both fined and
26 imprisoned.

§16-60-3. Exceptions.

1 This article does not apply to the following payment practices:

2 (1) Any discount, payment, waiver of payment, or payment practice expressly authorized
3 by 42 U.S.C. §1320a-7b(b)(3) or regulations adopted thereunder;

4 (2) Any payment, compensation, or financial arrangement within a group practice provided
5 the payment, compensation, or arrangement is not to or from persons who are not members of
6 the group practice;

7 (3) Payments to a health care provider or health care facility for professional consultation
8 services;

9 (4) Commissions, fees, or other remuneration lawfully paid to insurance agents;

10 (5) Payments by a health insurer who reimburses, provides, offers to provide, or
11 administers health, mental health, or substance abuse goods or services under a health benefit
12 plan;

13 (6) Payments to or by a health care provider or health care facility, or a health care provider
14 network entity, that has contracted with a health insurer, a health care purchasing group, or the
15 Medicare or Medicaid program to provide health, mental health, or substance abuse goods or
16 services under a health benefit plan when the payments are for goods or services under the plan;

17 (7) Insurance advertising and promotional gifts;

18 (8) Commissions or fees paid to a person or entity providing a referral service to nurses
19 which provide health care services;

20 (9) Payments by a health care provider or health care facility to a health, mental health, or
21 substance abuse information service that provides information upon request and without charge
22 to consumers about providers of health care goods or services to enable consumers to select
23 appropriate providers or facilities, provided that the information service:

24 (A) Does not attempt through its standard questions for solicitation of consumer criteria or
25 through any other means to steer or lead a consumer to select or consider selection of a particular
26 health care provider or health care facility;

27 (B) Does not provide or represent itself as providing diagnostic or counseling services or
28 assessments of illness or injury and does not make any promises of cure or guarantees of
29 treatment;

30 (C) Does not provide or arrange for transportation of a consumer to or from the location of
31 a health care provider or health care facility; and

32 (D) Charges and collects fees from a health care provider or health care facility
33 participating in its services that are set in advance, are consistent with the fair market value for
34 those information services, and are not based on the potential value of a patient or patients to a
35 health care provider or health care facility or of the goods or services provided by the health care
36 provider or health care facility.

37 (10) Payments made by an assisted living facility to an individual employed by the assisted
38 living facility, or with whom the facility contracts to provide marketing services for the facility, if the
39 individual clearly indicates that he or she works with or for the facility; and

40 (11) Payments made to a resident of an assisted living facility who refers a friend, family
41 members, or other individuals with whom the resident has a personal relationship to the assisted
42 living facility, in which case the assisted living facility may provide a monetary reward to the
43 resident for making the referral.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2020.

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Governor